

be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this *Federal Register* notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 27, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 21st day of March 1989.

For the Nuclear Regulatory Commission.

Dominic C. Dilanni,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89-7337 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-19378 License No. 37-13604-02 (Expired) EA 89-52]

Michael F. Dimun, M.D., Carnegie, Pennsylvania; Order To Cease and Desist and Order Related to Disposition of Byproduct Material Effective Immediately

I

Michael F. Dimun, M.D. (Dr. Dimun) previously held NRC License No. 37-13604-02 issued by the Nuclear Regulatory Commission (NRC or Commission) on February 24, 1982. This license expired without a request for timely renewal on February 28, 1987. (Dr. Dimun had also held License No. 37-13604-01, which also had previously expired on March 31, 1980 without a request for timely renewal). When in effect, License No. 37-13604-02 authorized Dr. Dimun to possess sealed sources (containing 0.12 curies of strontium-90) at his office in Carnegie, Pennsylvania for use in the treatment of eye diseases.

II

During a telephone call with Dr. Dimun on August 5, 1988, the NRC, Region I, learned that even though the license had expired, Dr. Dimun still possessed a radioactive source containing strontium-90. During that telephone call, Dr. Dimun also informed Region I that he did not intend to submit an application for a new license, but rather planned to dispose of this regulated material by transferring it to an authorized recipient. However, since the material had not been disposed of at that time, even though the license expired in February 1987, Region I sent Dr. Dimun a Notice of Violation (Notice) on September 21, 1988, citing him for possession of regulated material without a license. The Notice required Dr. Dimun to provide a response, within 30 days, describing the corrective action taken to

transfer the source to an authorized recipient. As of February 16, 1989, the NRC Region I had not received a response to the Notice, and as a result, Region I again telephonically contacted Dr. Dimun on that date and was informed that he still possessed the strontium-90 sealed source.

III

NRC regulations, "Rules of General Applicability to Domestic Licensing of Byproduct Material," set forth in 10 CFR Part 30, require, in Section 30.3, that except for persons exempt as provided in 10 CFR Part 30 and 10 CFR Part 150, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in Chapter I—Nuclear Regulatory Commission. Since Dr. Dimun no longer possesses a valid license to possess or use strontium-90 as a sealed source, and since he is not exempt from licensing requirements as provided in 10 CFR Part 30 and 10 CFR Part 150, possession or use of this regulated byproduct material constitutes a violation of 10 CFR 30.3. Dr. Dimun has indicated his intention not to seek another license, and has not yet transferred the source to an authorized recipient despite being clearly put on notice to do so by the Notice of Violation issued by the NRC on September 21, 1988. Continued possession of this source without being properly licensed could pose a threat to the health and safety of the public. Therefore, I have determined that immediate action shall be taken, in the interest of public health and safety, to ensure proper transfer of the source to an authorized recipient.

IV

Accordingly, in view of the foregoing, and pursuant to Sections 81, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and Part 30 of the NRC Regulations, *It is hereby ordered, effective immediately, that Michael F. Dimun, M.D. shall:*

1. Cease and desist from any further use of byproduct material now in his possession;
2. Promptly store the material in a safe storage location, and, with respect to such storage, comply with the provisions of 10 CFR Part 20, "Standards for Protection Against Radiation;"
3. Within thirty days of the date of this Order, cause the byproduct material now in his possession to be leak tested in accordance with Condition 14 of License No. 37-13604-02 (expired) and

transfer the byproduct material to a person authorized to receive it, and at least one working day prior to such transfer, notify the NRC of the name, address and location of the person to whom the material shall be transferred. The notification shall be made to Dr. Malcolm R. Knapp of the NRC Region I office (215) 337-5000; and

4. Within 10 days after the actual transfer of the material, certify to the NRC, under oath or affirmation, that all byproduct material has been transferred to an authorized recipient and that no radioactive material (regulated by the NRC pursuant to a general or specific license) is still in his possession. That certification shall be sent to the Regional Administrator, USNRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

For the Nuclear Regulatory Commission.
Hugh L. Thompson, Jr.,
Deputy Executive Director for Nuclear
Materials Safety, Safeguards, and Operations
Support.

Dated at Rockville, Maryland this 17 day of
March 1989.

[FR Doc. 89-7338 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

**Northeast Nuclear Energy Co.;
Millstone Nuclear Power Station, Unit
No. 1 Denial of Amendment to Facility
Operating License and Opportunity for
Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Northeast Nuclear Energy Company (licensee) to amend Facility Operating License No. DPR-21, issued for the operation of Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut. Notice of Consideration of Issuance of this amendment was published in the Federal Register on August 12, 1987 (52 FR 29923).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to allow containment deinerting and entry during power operations for testing, surveillance or maintenance of equipment "necessary to ensure safe plant operation." Currently, the TS this only for equipment "important to safety." It is the staff's position that the current TS requirements for containment deinerting and entry are appropriate with regard to plant safety and personnel safety considerations.

The licensee was notified of the Commission's denial of the proposed TS amendment by a letter dated

By April 27, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

For further details with respect to this action, see (1) The application for amendment dated August 12, 1987, and (2) the Commission's letter to the licensee dated.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, CT 06385. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 21st day of March, 1989.

For the Nuclear Regulatory Commission
Michael L. Boyle,
Project Manager, Project Directorate I-4,
Division of Reactor Projects I/II, Office of
Nuclear Reactor Regulation.

[FR Doc. 89-7339 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-26653; File No.
SR-Amex-87-25]

**Self-Regulatory Organizations;
American Stock Exchange, Inc.; Order
Approving Proposed Rule Change
Relating to the Listing and Trading of a
Broad-Based Index Option Contract
Based on the International Market
Index**

I. Introduction and Background

On October 2, 1987, the American Stock Exchange, Inc. ("Amex" or

"Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to list for trading a new broad-based market index option contract based on the International Market Index ("IMI")—a group of 50 foreign stocks and American Depositary Receipts ("ADRs")³ traded on the Amex or the New York Stock Exchange, Inc. ("NYSE") or quoted on the National Association of Securities Dealers Automated Quotations ("NASDAQ") system.⁴

The proposed rule change was noticed in Securities Exchange Act Release No. 25482 (March 17, 1988) 53 FR 9528. No comments were received on the proposed rule change.

II. Description of the Proposal

The IMI is a capitalization-weighted index⁵ exclusively based on the prices of 50 foreign stocks whose domicile is located in the European Community,⁶ Japan, Hong Kong, and Australia. The Index component stocks are traded in the U.S. either directly or as ADRs on the Amex, the NYSE, or through the NASDAQ system. All of the securities to be used in calculating the Index are registered with the SEC under the Act or are exempt from such registration under SEC Rule 12g3-2⁷ or section 12(f)⁸ of

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1988).

³ ADRs are negotiable certificates representing ownership of shares in a non-U.S. company. They are quoted and traded in U.S. dollars in the U.S. securities markets.

⁴ Pursuant to section 2(a)(1)(B) of the Commodity Exchange Act ("CEA"), as amended by the Futures Trading Act of 1982 to reflect the terms of the jurisdictional accord between the Commission and the Commodity Futures Trading Commission ("CFTC"), the Commission forwarded to the CFTC a letter not objecting to the designation of the Coffee, Sugar, and Cocoa Exchange ("CSCE") as a contract market to trade futures on the IMI Stock Index. See Letter from Jonathan G. Katz, Secretary, SEC, to Dr. Paula A. Tosini, Director, Division of Economic Analysis, CFTC, dated September 1, 1988. On December 15, 1988, the CFTC approved the designation of the CSCE as a contract market for trading futures on the IMI.

⁵ In a capitalization-weighted index, the relative weight of an issue in the total index value is determined by multiplying the price per share of a security by the total number of such securities outstanding. The total number of outstanding shares of the IMI components include those held by corporate insiders. In addition, as of December 31, 1988, the over-the-counter ("OTC") components of the IMI accounted for 36.67% of the capitalization weight of the Index.

⁶ The members of the European Community which have companies currently included in the IMI are Denmark, Italy, the Netherlands, Norway, Spain, Sweden, and the United Kingdom ("U.K.").

⁷ 17 CFR 240.12g3-2 (1988).

⁸ 15 U.S.C. 78(f)(1) (1982).

the Act. The Amex proposes to trade standardized European-style (exercise at expiration only) options based on this new Index.

Options on the IMI would be traded pursuant to current Exchange rules governing the trading of index options.⁹ These rules govern matters such as disclosure, account approval and suitability, position and exercise limits, margin, and trading halts and suspensions.¹⁰

The Index will be calculated and maintained by the Amex between 9:30 a.m. and 4:15 p.m., New York time, based on the trading of actual shares or ADR prices of component securities in U.S. markets. In calculating the Index, last sale price information for exchange-traded and NASDAQ National Market System ("NMS")¹¹ securities, and the arithmetic mean between the highest bid price and the lowest offer price as quoted on the NASDAQ market, for NASDAQ non-NMS securities, will be used. The Index value for purposes of settling specific IMI contracts will be calculated on the basis of ADR opening prices (or prices of the component stocks) in the U.S. markets for exchange traded securities and on the arithmetic mean of the NASDAQ inside market at 9:30 a.m. New York City time for NASDAQ NMS and non-NMS securities on the business day prior to the expiration date of the contracts, normally the Friday preceding expiration Saturday. The information will be disseminated to vendors through the Options Price Reporting Authority ("OPRA") system. A benchmark Index value of 200.00 has been established for the Index as of January 2, 1987. On December 28, 1988, the closing Index value was 300.42. The index multiplier will be 100.¹²

In order to be included in the Index the minimum market value in U.S. dollars of a foreign security, as measured by total worldwide shares outstanding, must be \$100 million. In addition, at least 75% of the Index's

component stocks each must have a minimum average monthly trading volume over a six month period in the U.S. market of 50,000 ADRs (or shares if the component does not trade as ADRs in the U.S.).¹³ Also, if the security is traded through the NASDAQ system, the minimum number of market makers regularly making markets in the security must be eight. Moreover, the spreads between the bid and offer prices quoted for the NASDAQ securities must be reasonable in relation to the spreads for other securities traded through the NASDAQ system having similar trading characteristics and selling in the same general price range.

In maintaining the Index, the Amex reserves the right to substitute stocks or to increase the number of stocks included in the Index, based on changing international conditions or newly developed foreign equity securities traded in U.S. domestic markets.¹⁴ The component weight of Index stocks will be periodically adjusted to account for certain corporate events such as additional stock issuances or repurchases, stock splits, or stock dividends.

The stocks comprising the IMI currently represent ten countries and approximately 20 different industry groups, including electronics, automobile companies, airlines, chemical and pharmaceutical companies, and financial institutions. Currently, the three highest capitalization-weighted countries comprising the Index are Japan, U.K., and the Netherlands with weights of 54.97%, 22.81%, and 9.36%, respectively.

III. Discussion

The IMI is the first stock index option contract exclusively based on stocks from non-U.S./Canadian countries. In addition, the IMI is the first index option based on ADR and foreign stock prices in the U.S. market. The unique structure

of the IMI raises several concerns in connection with the trading of an option on the index.

First, the market for ADRs may be significantly less active or liquid than trading of the actual shares in the home country.¹⁵ Second, many of the actual underlying shares comprising the IMI, especially the Japanese stocks, are traded on their foreign-based home markets during periods in which the ADRs are not being actively traded in the U.S. markets. Third, complete surveillance of the option is limited by the fact that the execution of surveillance sharing agreements between the Amex and all foreign exchanges on which IMI component stocks principally trade would be difficult. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these concerns.

A. Index Design and Structure

The broad diversification, large capitalization, and liquid markets of the Index's components stocks significantly minimize the potential for manipulation on the companies' home markets. The ten most highly capitalized stocks in the IMI account for approximately 55% of the Index's cumulative market value.¹⁶ Although Toyota accounts for 11.28% of the IMI's cumulative market value, manipulation of the Index through trading in Toyota is made more difficult because the stock is widely held and actively traded.¹⁷ Further, the index components are highly capitalized. The index component with the smallest capitalization was Norsk Data at \$214.6 million, and the median and mean capitalization for the 50 firms was \$5.02 billion and \$9.63 billion, respectively.¹⁸

¹⁵ See, e.g., DeMaria, *The Case Against Japanese A.D.R.s*, N.Y. Times, Oct. 23, 1988, at F8, col. 3. There are several situations, however, in which the market for ADRs of IMI component stocks is more active or liquid than trading in certain IMI home markets. For example, KLM Royal Dutch Air has an Average Daily Volume ("ADV") in the Netherlands of 4,000 shares but an ADV of approximately 108,000 ADRs (representing 108,000 shares) in the U.S. In addition, Pharmacia AB has an ADV of 33,000 shares in Sweden but an ADV of approximately 158,000 ADRs (representing 118,500 shares) in the U.S.

¹⁶ By comparison the 10 most highly price-weighted stocks in the Major Market Index ("XMI") account for approximately 70% of that Index's cumulative market value.

¹⁷ Toyota's ADV between September 1987 and April 1988, on its home market, was 1,487,000 shares. Its ADV in the U.K. and U.S. during that same period of time was 50,000 shares and 26,600 shares (after adjusting for ADR-Share Ratio), respectively. In addition, as of June 1988, the total ADR float for Toyota was 1,120,031.

¹⁸ Of the 50 securities comprising the IMI, 27 are listed on the NYSE, one on the Amex, and the

Continued.

⁹ See Amex Rules 900C-980C.

¹⁰ See Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 which provides for a one hour trading halt in all index options traded on the Amex if the Dow Jones Industrial Average declines 250 points from the previous day's closing value.

¹¹ National Market System securities are those equity securities, both on exchanges and in the OTC market, for which real-time transaction reporting is required. See Rules 11Aa2-1 and 11Aa3-1 under the Act, 17 CFR 240.11Aa2-1 and 240.11Aa3-1 (1988).

¹² An index multiplier is a number which determines the total dollar value of each point of the difference between the exercise price of an option and the current level of the underlying index. A multiplier of 100 means that for each point by which an option is in the money, there is a \$100 increase in intrinsic value.

¹³ The remaining 25% of the index's component stocks each must have a minimum average monthly trading volume over a six month period in the U.S. market of 20,000 ADRs (or shares if the component does not trade as ADRs in the U.S.).

¹⁴ The Amex requires that the IMI include a minimum of 50 stocks and that these 50 stocks continue to maintain certain eligibility criteria. In maintaining the Index, the Exchange will make an effort to ensure country dispersion within Europe and the Pacific Basin and industry dispersion across major manufacturing and non-manufacturing sectors. The Commission believes that a significant increase in the number of stocks currently included in the index would represent a material change to the terms of the Amex contract and require a re-examination of the contract by the Commission. In addition, a significant increase or reduction of weighting in the various national markets comprising the Index also would require Commission re-examination.

Moreover, the home markets for most of the Index's components are quite active.¹⁹ Although several component stocks are lightly traded on their home market, they are actively traded as ADRs in the U.S.

In addition, the index inclusion criteria provide that at least 75% of the IMI component stocks must have an average monthly trading volume over the previous six month period in the U.S. market of at least 50,000 ADRs (or shares if the component does not trade as ADRs in the U.S.) and the remaining 25% of the component stocks must have average monthly trading volumes of no less than 20,000 ADRs (or shares if the component does not trade as ADRs in the U.S.) over this same period. The Japanese ADRs raise special concerns due to their heavy (55%) weighting in the IMI, the fact that trading in the home market closes 8½ hours before the IMI opening, and the instances of shortages in Japanese ADRs.²⁰ Based on correspondence from the Amex and ADR banks, however, it is the Commission's understanding that because ADRs are freely convertible into the ordinary shares which they represent, the Japanese ADRs are not necessarily less liquid or more volatile than the market for their underlying shares.²¹ ADR bankers note that if purchase (sale) orders for Japanese ADRs can not be filled in the U.S. market, orders are easily filled through the conversion mechanism by creating new ADRs. Thus, Japanese ADR volatility and liquidity in the U.S. is a reflection of volatility and liquidity in

balance are in the NASDAQ system (15 of the 22 NASDAQ issues are NMS securities). Although the minimum number of market makers required to make markets regularly in the NASDAQ component issues is eight, at the present time the number of registered market makers for the NASDAQ issues exceeds that minimum requirement; each IMI NASDAQ issue has at least 12 market makers, and 12 of the issues (representing approximately 25% of the capitalization weight of the Index) have more than 20 market makers. In this regard, the Amex informed the Commission that no single market maker (or small group of market makers) dominates the trading in any particular NASDAQ issue which is a component of the IMI. Telephone conversation on August 31, 1988, between Steven Bloom, Assistant Vice President, New Products Development, Amex, and Ivan Davis, Attorney, Division of Market Regulation, SEC.

¹⁹ As of June 1, 1988, the mean ADV for IMI's 50 components on their home markets was 1,767,100 shares.

²⁰ See note 24 *infra*.

²¹ See Letter from Nathan Most, Vice President, New Products Development, Amex, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated November 18, 1988, enclosing letter from Joseph M. Velli, Vice President, ADR Division, Bank of New York, to Lawrence DeMaria, Reporter, Financial Section, *N.Y. Times*, dated October 26, 1988, and letter from Ralph Marinello, Vice President, ADRs, Irving Trust, to Editor, *N.Y. Times*, dated October 31, 1988.

the underlying foreign shares. In this regard, the Amex notes that the average annualized volatility of the present IMI components is 35.5% compared to 29.0% for the Amex's Institutional Index ("XII").²²

Finally, based on data concerning the SEC-registered ADR levels versus the actual number of outstanding ADRs, the Commission believes that, while not impossible, it would be difficult to effect a physical squeeze in any of the current ADR components in IMI because the actual ADRs outstanding are substantially below the ceiling represented by SEC registration levels.²³ Moreover, discussions between Commission staff and ADR traders and bankers have revealed extensive systems and procedures by which ADR banks monitor outstanding float versus SEC registration levels. When the float levels begin to approach SEC registration levels the appropriate parties (e.g., ADR banks) submit filings to the Commission to increase registration levels and those filings generally are processed expeditiously by the Commission.²⁴

²² The Amex suggests that the slightly higher volatility of the IMI components is largely attributable to foreign exchange rate movements, and that therefore IMI component ADRs are no more volatile than most U.S. blue chip securities. See Letter from Nathan Most, Vice President, New Products Development, Amex, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated November 18, 1988. Furthermore, the Amex provided data indicating that for the 15 Japanese securities included in the IMI, the average weekly volatility for the ADRs over the last 60 weeks was 30.473 compared to an average weekly volatility for the underlying stocks for the same period of 30.326. In addition, the Japanese security with the largest annualized volatility divergence between ADR and underlying share is Ito Yokado with an ADR annualized volatility of 26.8% and an annualized volatility of 24.2% for the underlying share. See Letter from Steven Bloom, Assistant Vice President, New Products Development, Amex, to Joseph Furey, Branch Chief, Division of Market Regulation, SEC, dated December 23, 1988.

²³ As of December 28, 1988, the two IMI component stocks whose actual outstanding ADR levels were closest to their SEC-registered ADR levels were KLM Royal Dutch (representing 0.2% of the capitalization weight of the Index) with approximately 12,366,955 ADRs outstanding and 15,000,000 SEC-registered ADRs and Beecham Group PLC (representing 1.26% of the capitalization weight of the Index) with approximately 19,779,000 ADRs outstanding and 20,000,000 SEC-registered ADRs. The Commission notes that Morgan Guaranty has filed a standard F-6 registration statement for an additional 20,000,000 Beecham Group ADRs.

²⁴ The Commission notes, however, that temporary shortages of ADRs have occurred in the past, especially in Japanese securities, and could affect ADR prices on a short term basis. See Sandler, Scarcity of Sony ADRs Helps Teach Lessons About Certain Intricacies of Global Trading, *Wall St. J.*, Sept. 17, 1987, at 69, col. 3. Due to the varied nationality of the Index's ADRs and the relatively low capitalization weighting of the largest component ADRs, the Commission believes

B. International Arbitrage

Aside from Index design, international ADR arbitrage will help to alleviate concerns over the relatively smaller ADR trading volume and will help to ensure that ADR prices reflect the pricing on the home market. The Commission understands that international arbitrage between the U.S. and the U.K. market for ADRs makes it difficult to affect significantly the prices of the component ADRs of the Index. Specifically, when spreads develop between the home market share prices and U.S. ADR prices, active ADR traders (usually in London or New York) will sell ADRs if the ADR trades at a premium to its underlying security. Similarly, if the ADR were trading at a discount to its underlying shares, arbitrage traders will purchase the ADRs, convert them into the underlying shares, and sell these shares at a profit in a foreign market trading the security. This arbitrage will act to limit the amount ADR prices in U.S. markets are out of line with home country prices or ADR prices in the U.K.

International arbitrage also will help ensure more reliable price determinations for settlement purposes.²⁵ Any abnormal price changes occurring in a component issue (in particular a Japanese component) or in foreign currency exchange rates during the interim between the closing of foreign home markets and the opening of the U.S. markets should be ameliorated by New York and London arbitrageurs in the London marketplace, as stocks comprising 94% of the capitalization weight of the Index actively trade on the SEAQ International.²⁶ (mean ADV of 777,000 shares).²⁷ For exchange traded ADRs in

it would be difficult to manipulate the Index through the creation of ADR shortages.

²⁵ ADR opening prices will occur either during active trading in foreign markets such as the U.K., where trading actually overlaps the opening of the U.S. markets, or after the close of trading in other markets, such as Japan, where the previous day's trading will have ceased 8½ hours prior to the opening of the U.S. markets.

²⁶ The Stock Exchange Automated Quotations International is the electronic communications facility of the International Stock Exchange ("ISE") covering international equities.

²⁷ The Amex informed the Commission that conversations it had with several ADR bankers and traders revealed that international arbitrage mechanisms (e.g., conversion of ADRs into underlying shares and vice versa) continued to function during the volatile period in October 1987. Telephone conversation on August 2, 1988, between Steven Bloom, Assistant Vice President, New Products Development, Amex, and Ivan Davis, Attorney, Division of Market Regulation, SEC.

particular, the single-price auction opening on the NYSE or Amex will reflect pre-opening interest from arbitrageurs and the scrutiny that arbitrageurs will give to the setting of the opening price. For NASDAQ ADRs, many of the market makers submit pre-opening quotations, which also are subject to scrutiny by arbitrageurs and help to ensure that the opening quotation is reflective of competitive market maker activity.

C. Amex Surveillance

Due to the unique composition of the IMI and the special concerns emanating from reliance on ADR prices, the Amex has developed a special surveillance program for the IMI. First, all the procedures which currently apply to the Amex's existing stock index options surveillance program will apply to surveillance of the IMI.²⁸ Second, in response to the international nature of the Index, the Amex will conduct additional surveillance of Japanese and European stocks with capitalization weights in excess of 2.0% of the Index. Currently, these stocks represent approximately 65% of the entire capitalization weight of the Index. The Amex will capture on a daily basis, among other things, the following information for these stocks: (1) Tokyo market closing price information for Japanese components; (2) London market trade and quote information for the period extending from ½ hour before U.S. trading begins to the overlap period between U.S. and London trading for U.K. stocks; and (3) U.S. market trade information for NYSE, Amex, and NASDAQ NMS securities and quote information for NASDAQ non-NMS securities for the first hour of U.S. trading. The Amex will use this data to compare the opening prices in component stocks on ADRs with the closing prices in Japan and transactions being executed in the U.K. in an attempt to identify aberrant prices in the IMI at the opening of U.S. trading and any other unusual trading activity.

Third, the Commission consistently has noted that, to ensure that stock index options are not readily susceptible to manipulation, surveillance sharing agreements between the exchange on which the index option trades and the

markets that trade the underlying securities are necessary. The exchange of surveillance data by the exchange trading a stock index option and the markets for the securities comprising the index is important to the detection and deterrence of intermarket manipulation. In this regard, the Commission notes that the Amex has the necessary surveillance sharing arrangement with the exchanges whose ADRs comprise the Index. Specifically, the Amex, NYSE, and National Association of Securities Dealers ("NASD") are members of the Intermarket Surveillance Group. As members, these markets are required to share surveillance information with one another.

Due to the fact that the home country trading of foreign securities can impact ADR prices in the U.S., the Commission believes that the Amex also should secure surveillance sharing agreements with the relevant foreign exchanges. Because U.K. and Japanese securities represent 77.78% of the weighting of the Index, the Commission has agreed with Amex's suggestion that, at least initially, the Exchange need only secure agreements with the two markets in these countries.²⁹

Nevertheless, the Commission, of course, encourages the Amex to pursue such agreements with the countries whose stocks comprise the remaining 22% of the Index as a separate matter.

In regard to British stocks, the Amex has executed a surveillance sharing agreement with The Securities Association ("TSA").³⁰ This surveillance agreement will permit the Amex to obtain, where appropriate, trade and clearance information relating to U.K. securities underlying the IMI.³¹

²⁸ The majority of the component stocks of the countries comprising the remaining 22% of the Index (the Netherlands—9.36%, Australia—3.48%, Sweden—3.39%, Spain—2.06%, Denmark, Italy, and Norway combined—2.53%, and Hong Kong—1.42%) are more actively traded in the U.S. than on their home markets.

²⁹ Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement, dated October 13, 1988 ("Amex/TSA MOU"). TSA came into existence as a result of an agreement between the ISE and the International Securities Regulatory Organization ("ISRO"). Under the terms of the agreement, the ISE was established as a recognized investment exchange with rights and obligations analogous to the NASD, and ISRO was reorganized as the TSA. Currently, the TSA is the selfregulatory organization responsible for regulating the U.K. equity securities market. Although all ISE members must be members of the TSA, TSA also consists of members which may not be active on the ISE. Thus, the Amex/TSA MOU will allow the Amex to obtain trading data from more U.K. securities market participants, whose activity may affect the IMI, than would an Amex/ISE agreement.

³¹ Pursuant to the Amex/TSA MOU all securities traded through the SEAQ International, including foreign ADRs, are considered U.K. securities.

whether relating to a member(s) of Amex or TSA. Such surveillance information may include information concerning the identity and trading activities of individual customers as well as member firms.

In regard to Japanese component stocks, the Amex has executed a surveillance sharing agreement with the Tokyo Stock Exchange ("TSE") which obligates the parties to use their best efforts to compile and transmit information relating to "transactions on the [Amex or TSE], price quotations, clearing data, and the identity of persons holding large positions in IMI options or the underlying stocks."³² The Amex/TSE Agreement also provides that the parties will resolve in good faith any disagreements regarding requests for such information or responses thereto. Although the Amex/TSE Agreement represents a substantial advance in regulatory cooperation between U.S. and Japanese securities markets it does contain several provisions that raise concerns as to the ability of the Amex to obtain information from the TSE in all cases.

In particular, the SEC is concerned about the operation of Article 106 of the Japanese Securities and Exchange Law³³ as it relates to the surveillance sharing agreement, and about confidentiality provisions in sections 2D and 3 of the agreement. The SEC, however, has discussed with the TSE its concerns regarding these provisions.³⁴

³² Agreement Between the American Stock Exchange, Inc. and the Tokyo Stock Exchange to Share Market Surveillance Information ("Amex/TSE Agreement"), dated November 4, 1988. The TSE signed substantially identical agreements with the Chicago Board of Trade ("CBT") to cover trading of the CBT's TOPIX Index and the Chicago Mercantile Exchange ("CME") to cover trading of the CME's Nikkei Stock Average futures, as well as any contracts listed in the future.

³³ Article 106 provides: "No person who is or has been an officer or employee of a securities exchange shall divulge or make surreptitious use of secrets which he may have acquired in the course of performing his duties." Secret information, which includes the identity of persons holding large positions, could be divulged, however, "where the legal interest of making the information available is deemed greater than that of keeping the information confidential." Letter from Mitsuo Sato, Managing Director, TSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 19, 1988, at 2. Such a determination would be made on a case-by-case basis, taking into consideration "(1) the degree of the need for the information requested; (2) the degree of the confidentiality of such information; and (3) the degree of the confidentiality with which the receiving party treats such information." *Id.*

³⁴ See Letter from Mitsuo Sato, Managing Director, TSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 10, 1988; Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Mitsuo Sato, Managing Director, TSE, dated August 11, 1988.

²⁸ In response to Commission concerns regarding opening settlement prices for NASDAQ IMI components, in addition to their regular option surveillance procedures, on expiration days the Amex will conduct special procedures to examine market maker activity and quotation changes in the NASDAQ IMI components. See Letter from Nathan Most, Vice President, New Products Development, AMEX, to Joseph Furey, Branch Chief, Division of Market Regulation, SEC, dated February 8, 1989.

and has received assurances from the TSE as to its willingness to provide information to the extent not prohibited by law.³⁵

In addition, if the TSE were to make a determination that pursuant to Article 106 it could not share certain information with the Amex, it could be required by Japanese law to provide the information to the Japanese Ministry of Finance ("MOF").³⁶ In that event, the Commission believes that the Memorandum of Understanding ("MOU") between the SEC and the MOF could be utilized by the SEC to acquire the information from the MOF on Amex's behalf.

D. Market Impact

The Commission believes that the listing and trading of IMI options on the Amex will not adversely impact the underlying securities markets in the U.S. First, as previously mentioned, existing Amex stock index options rules and surveillance procedures will apply to option contracts based on the IMI. Second, the Commission notes that the Index is broadbased and diversified and includes highly capitalized securities that generally are traded actively on their primary securities exchanges in addition to other securities markets abroad. In this regard, the Commission does not believe that the IMI will impact adversely foreign markets in which the underlying stocks or ADRs are traded.

The Commission believes that the availability of options on the IMI should help to remove impediments to a free and open global market and should facilitate transactions in securities because the IMI option will provide investors with a means to hedge exposure to market or systematic risk associated with foreign stock investments.

The Commission believes further that the trading of listed options on an index of foreign stocks will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of foreign stocks, especially Japanese and U.K. stocks.³⁷ The IMI

also will contribute further to the increasing internationalization of the world's securities markets. The Commission also believes that the IMI option will provide investors a means by which to make investment decisions in the non-U.S./Canadian world equity market, thus allowing them to establish positions or increase existing positions in foreign stocks cost efficiently. Finally, the Commission notes that investors also could pursue a strategy designed to supplement their dividend income by writing options on the IMI.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³⁸ that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹

Dated: March 21, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-7278 Filed 3-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26656; File No. SR-DTC-89-06]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Company Relating to Legal Deposit Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1989, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

new option proposal upon a finding that the introduction of such option is in the public interest. Such a finding would be difficult with respect to an option product that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

³⁵ 15 U.S.C. 78s(b)(2) (1982).

³⁹ 17 CFR 200.30-3(a)(12) (1988).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Prior to revision, DTC's legal deposit service provided full examination of every legal deposit and the fees were (as specified on Page T-106 of DTC's Participant Operating Procedures):

1 to 1500 deposits during the month.....	\$9.00 each
Excess over 1500 to 2500 deposits during the month.....	\$6.00 each
Excess over 2500 deposits during the month.....	\$3.00 each
Virtually all Participants have been paying the.....	\$9.00 fee

Under the proposed rule change, DTC will offer a more limited service, termed "basic service," that will not include full examination or telephone notification. DTC will continue to provide full-service examination by DTC staff at a reduced price and will provide and charge for telephone notification only when required and elected in advance by the Participant. Tracking Service will also be optionally available. The proposed new fees are:

Full-Service Fee (DTC staff examination).....	\$4.50/deposit
Telephone Notification (optional addition).....	\$4.20/deposit
Basic Fee (no DTC staff examination).....	\$3.15/deposit
Tracking Service (both services).....	\$.20/deposit

In addition, fees will no longer vary with deposit volume and, under the proposed rule change, if a transfer agent should reject a full-service deposit after it had been reviewed and accepted by DTC's staff, deposit reject fees would not normally be imposed.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

³⁵ The SEC has the statutory authority to obtain any surveillance information provided the Amex by the TSE. See Letter from Mitsuo Sato, Managing Director, TSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 19, 1988.

³⁶ See Letter from Mitsuo Sato, Managing Director, TSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated August 29, 1988. The relevant provision is Article 154 of the Japanese Securities and Exchange Law.

³⁷ In contrast to CEA regulations, the federal securities laws do not contain an explicit "economic purpose" test for new options products. Nevertheless, pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any